



0000091358

ORIGINAL

OPEN MEETING AGENDA ITEM

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION)
 OF ARIZONA SOLAR ONE, LLC., IN)
 CONFORMANCE WITH THE)
 REQUIREMENTS OF ARIZONA REVISED)
 STATUTES §§ 40-360, *et seq.*, FOR A)
 CERTIFICATE OF ENVIRONMENTAL)
 COMPATIBILITY AUTHORIZING THE)
 CONSTRUCTION OF THE SOLANA)
 GENERATING STATION, LOCATED IN)
 SECTION 9, TOWNSHIP 6 SOUTH, RANGE)
 7 WEST, MARICOPA COUNTY, ARIZONA.)

Docket No. L-00000GG-08-0407-00139

Case No. 139

Arizona Corporation Commission

DECLINED

RECEIVED	MM
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IN THE MATTER OF THE APPLICATION)
 OF ARIZONA SOLAR ONE, LLC., IN)
 CONFORMANCE WITH THE)
 REQUIREMENTS OF ARIZONA REVISED)
 STATUTES §§ 40-360, *et seq.*, FOR A)
 CERTIFICATE OF ENVIRONMENTAL)
 COMPATIBILITY AUTHORIZING THE)
 CONSTRUCTION OF THE SOLANA GEN-)
 TIE, WHICH ORIGINATES AT THE)
 SOLANA GENERATING STATION,)
 LOCATED IN SECTION 9, TOWNSHIP 6)
 SOUTH, RANGE 7 WEST, MARICOPA)
 COUNTY, AND TERMINATES AT THE)
 PANDA 230 kV SUBSTATION, LOCATED)
 IN SECTION 20, TOWNSHIP 5 SOUTH,)
 RANGE 4 WEST, GILA BEND, ARIZONA.)

Docket No. L-00000GG-08-0408-00140

Case No. 140

RECEIVED
 2008/06/11 P 1:39

RESPONSE TO ARIZONA CORPORATION COMMISSION**STAFF'S REQUEST FOR REVIEW****I. Introduction**

On November 5, 2008, the Arizona Corporation Commission Staff ("Staff") submitted a Request for Review of the Certificates of Environmental Compatibility ("CECs") granted to Arizona Solar One ("Applicant") by the Arizona Power Plant and Transmission Line Siting

1 Committee ("Committee") in the above referenced dockets. One issue raised by Staff was its
2 request for clarification of the corridor description in the CEC. As Staff noted in its Request, the
3 Applicant does not oppose this clarification. Staff also asked the other parties to provide any
4 additional e-mails between any party and any Committee member(s) not included with Staff's
5 Request for Review. Attachment A includes additional e-mails identified by the Applicant.

6 Staff also requested that the Commission overturn one aspect of the Committee's decision
7 and impose a condition mandating a specific distance between existing 230 kV lines and the new
8 line certificated in Case 140 ("Gen-Tie"). Because this proposed condition would unnecessarily
9 burden private landowners and add costs to the Project, the Applicant urges the Commission to
10 uphold the Committee's decision for the reasons outlined below.

11 **II. A pole separation condition would impose unnecessary costs.**

12 Staff requests that the Commission order that the distance between the Gen-Tie's new,
13 metal towers and the existing, wooden poles that are located along a portion of the route be equal
14 to or greater than the height of the tallest metal tower in each span.

15 Staff believes the proposed condition provides a benefit by protecting an existing
16 transmission line built with wooden poles from the threat of complete failure of the adjacent new,
17 metal towers. However, there is little risk that some event would cause the metal towers, but not
18 the wooden ones, to fail. The testimony in this case is that the 230 kV metal poles contemplated to
19 be used for this Project are far more sturdy than the existing wooden poles. Tr. at 402:18-403:2.

20 The Applicant believes the costs of the proposal outweigh any speculative benefits
21 associated with it. Staff's condition would require the Applicant to acquire an additional right-of-
22 way between 30 to 120 feet in width, for a distance of at least four, and potentially eight, miles.
23 This equates to nearly 120 additional acres that the Applicant would need to acquire for the Gen-
24 Tie right-of-way. Additionally, landowners would be faced with the prospect of wider spacing
25 between parallel lines on their properties. In sum, the additional right-of-way that would be
26

1 required if Staff's proposed condition were adopted increases costs for the Project and increases
2 impacts to the landowners on whose property the Gen-Tie will cross.

3 When it conducted its objective comparison of the costs and benefits based on the
4 evidence in the record, the Committee concluded that the condition was unwarranted. The
5 Applicant believes the Committee's decision remains sound and respectfully requests that it be
6 upheld.

7 Alternatively, Staff has proposed a modification to the CEC that would specify that the
8 minimum distance between towers be at least the distance of the height of the tallest wooden 230
9 kV tower in a given span. Staff correctly summarizes the testimony on this point, and the
10 Applicant does not oppose this alternative modification to the CEC.

11 **III. Conclusion**

12 As the evidence before the Committee showed, Staff's requested additional condition
13 specifying a pole separation distance would impose unwarranted additional costs on the Applicant
14 and impact on private landowners. However, Staff's alternative request is consistent with the
15 record and is acceptable to the Applicant.

16 RESPECTFULLY SUBMITTED this 26th day of November, 2008.

17 LEWIS AND ROCA LLP

18 

19 Thomas H. Campbell
20 Albert H. Acken
21 40 N. Central Avenue
22 Phoenix, Arizona 85004
23 Attorneys for Arizona Solar One, LLC
24
25
26

1 **ORIGINAL** and twenty-seven (27) copies of
2 the foregoing filed this 26th day of November, 2008, with:

3 The Arizona Corporation Commission
4 Utilities Division – Docket Control
5 1200 W. Washington Street
6 Phoenix, Arizona 85007

7 **COPY** of the foregoing mailed
8 this 26th day of November 2008, to:

9 John Foreman, Chairman
10 Arizona Power Plant and
11 Transmission Line Siting Committee
12 Office of the Attorney General
13 1275 West Washington Street
14 Phoenix, Arizona 85007

15 Charles H. Hains
16 Legal Division
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007
20 Attorney for the Arizona Corporation Commission Staff

21 Timothy M. Hogan
22 202 E. McDowell Road, Suite 153
23 Phoenix, Arizona 85004
24 Attorney for Sierra Club – Grand Canyon Chapter

25 Jay Moyes
26 Jeffrey Zimmerman
Moyes Sellers & Sims
1850 N. Central Avenue, Suite 1100
Phoenix, Arizona 85004
Attorneys for Paloma Irrigation and Drainage District

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ATTACHMENT A

Acken, Albert

From: Griffin, Betty Jean
Sent: Tuesday, August 05, 2008 3:55 PM
To: 'susan.ellis@azag.gov'; 'john.foreman@azag.gov'
Cc: Campbell, Tom; Acken, Albert; Haberman, Marjorie
Subject: Final Notice of Hearing
Attachments: 1960230_1.DOC

Attached is the final version of the Notice of Hearing in the Abengoa matter(s). Just to be sure you received this, please confirm receipt by return e-mail or telephone.

Thanks - Betty Jean

Betty Jean Griffin, Secretary to
Thomas H. Campbell and
Marjorie J. Haberman
Lewis and Roca LLP
40 N. Central Avenue
Phoenix, AZ 85004
(602) 239-7424
BJGriffi@LRLaw.com

Acken, Albert

From: John Foreman [John.Foreman@azag.gov]
Sent: Tuesday, August 05, 2008 4:43 PM
To: Griffin, Betty Jean
Cc: Acken, Albert; Haberman, Marjorie; Campbell, Tom
Subject: Re: Final Notice of Hearing

Betty Jean,
I will sign the notice tomorrow when we get the Motion to Consolidate and I will also execute the pre-hearing procedural order.
Thanks for your help

John Foreman
Assistant Arizona Attorney General
Chair, Arizona Power Plant and Transmission Line Siting Committee
1275 W. Washington
Phoenix, AZ 85007
Tel: 602-542-7902
FAX: 602-542-4377
john.foreman@azag.gov

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>>> "Griffin, Betty Jean" <BJGriffi@lrlaw.com> 8/5/2008 3:55 PM >>>
Attached is the final version of the Notice of Hearing in the Abengoa matter(s). Just to be sure you received this, please confirm receipt by return e-mail or telephone.

Thanks - Betty Jean

Betty Jean Griffin, Secretary to
Thomas H. Campbell and
Marjorie J. Haberman
Lewis and Roca LLP
40 N. Central Avenue
Phoenix, AZ 85004
(602) 239-7424
BJGriffi@LRLaw.com

For more information about Lewis and Roca LLP, please go to www.lewisandroca.com.
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Tucson (520) 622-2090
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Reno (775) 823-2900
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Haberman, Marjorie

From: Susan Ellis [Susan.Ellis@azag.gov]
Sent: Monday, August 25, 2008 1:11 PM
To: Haberman, Marjorie; Campbell, Tom
Cc: John Foreman
Subject: #139 - #140 SOLAR ONE PRE-HEARING CONFERENCE

The Pre-Hearing Conference is scheduled for September 15, 2008 at 1:30 p.m., at the Arizona Attorney General's Office, 1275 West Washington Street, in the CPA Small Conference Room. Check in with the Receptionist, who will then notify us you are here.

Susie Ellis
Office of the Arizona Attorney General
Antitrust Unit
1275 W. Washington
Phoenix, AZ 85007-2926
Tel: (602) 542-7764
Fax: (602) 542-9088
susan.ellis@azag.gov

Haberman, Marjorie

From: Susan Ellis [Susan.Ellis@azag.gov]
Sent: Wednesday, September 17, 2008 11:01 AM
To: Timothy Hogan; Jack Haenichen; Paul Rasmussen; Mike Biesemeyer; Gregg Houtz; Barry Wong; Mike Whalen; David Eberhart; Patricia Noland; Jay Moyes; Haberman, Marjorie; Campbell, Tom; Suzanne Gray; Mike Palmer; Jeff McGuire; Billie Doorenbos
Cc: John Foreman; Linda Hogan
Subject: Second Amended Notice of Hearing
Attachments: 20080917213909176_1.pdf

Please see attached.

Susie Ellis
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Antitrust Unit
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Phoenix, AZ 85007-2926
Tel: (602) 542-7764
Fax: (602) 542-9088
susan.ellis@azag.gov

Acken, Albert

From: Tim Hogan [thogan@aclpi.org]
Sent: Friday, October 03, 2008 7:32 AM
To: Acken, Albert; jczimmerman@cox.net
Cc: Campbell, Tom; 'John Foreman'
Subject: RE: Arizona Solar One / Case No. 139, Draft CEC

Bert – I'm in depositions all day today. I'm available at 3:30 or after on Monday and then in depositions the rest of the week. Noon on Tues thru Fri would work best for me.

Tim Hogan
Executive Director
Arizona Center for Law in the Public Interest
202 E. McDowell Rd., Suite 153
Phoenix, AZ 85004
Tel: (602)258-8850

From: Acken, Albert [mailto:AAcken@lrlaw.com]
Sent: Thursday, October 02, 2008 4:55 PM
To: jczimmerman@cox.net
Cc: Campbell, Tom; Tim Hogan; John Foreman
Subject: Arizona Solar One / Case No. 139, Draft CEC

Jeff

As noted in Tom's email yesterday to the parties, and in accordance with the Chairman's procedural order, we propose a teleconference to meet and confer concerning proposed findings of fact, proposed conclusions of law, and the wording of the proposed Certificates of Environmental Compatibility. Charles and I spoke preliminarily today concerning scheduling and we're tentatively targeting early next week for the teleconference. Please advise Charles, Tim and me of your availability for a call to discuss.
Thanks. Bert Acken

From: Jeff Zimmerman [mailto:]
Sent: Thursday, October 02, 2008 3:31 PM
To: John.Foreman@azag.gov; Campbell, Tom
Cc: CHains@azcc.gov; Jay Moyes
Subject: Arizona Solar One / Case No. 139, Draft CEC

Chairman Foreman and Mr. Campbell,

Jay Moyes and I hereby convey the request of Paloma Irrigation and Drainage District ("District") that an additional condition be added to the draft Arizona Solar One CEC and that finding No. 8 be modified, as follows:

Condition to be added:

____. Applicant or its assignees will compensate Paloma Irrigation and Drainage District ("PIDD") for all water used at Solana in accordance with applicable PIDD rates, rules and regulations for such class of use, subject to and in accordance with the contract that Applicant has entered into with PIDD governing such water use.

If there is no agreement between PIDD and the project by October 14th, this condition should read as follows:

____. Applicant or its assignees will compensate Paloma Irrigation and Drainage District ("PIDD") for all water used at Solana in accordance with applicable PIDD rates, rules and regulations for such class of use.

In addition, finding and conclusion No. 8 should be modified to read as follows:

11/25/2008

8. Solana will be a water cooled plant that will use approximately 3,000 acre feet per year **within PIDD**, which is substantially less than the approximately **36,000** acre feet per year that has been **historically delivered by PIDD and** used on this site for agriculture, **and Applicant or its assignees will compensate PIDD for all water used at Solana in accordance with applicable PIDD rates, rules and regulations for such class of use.** (Additions and changes are in bold font.)

I am available for a conference call if we need to discuss this, Tom. I will send separate comments on the draft Gen-Tie CEC. Thank you!

Jeff

Jeff Zimmerman
Moyes Sellers & Sims
480-609-0402

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In accordance with Internal Revenue Service Circular 230, we advise you that if this email contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.

Acken, Albert

From: Acken, Albert
Sent: Tuesday, October 07, 2008 9:42 AM
To: 'John Foreman'
Cc: 'chains@azcc.gov'; 'Jeff Zimmerman'; Campbell, Tom; Tim Hogan; rmitchell@azcc.gov
Subject: Case 139, Arizona Solar One: Water data

Chairman Foreman

At the last hearing day, Staff counsel asked whether it would be possible for Staff to receive a copy of hydrological studies conducted for the Project. Tr 264:17-19. Additionally, Committee Member Houtz offered to have DWR write a letter concerning water availability onsite. Tr 309 and 310. The Applicant has compiled a brief summary to provide to Staff, in response to its request, and DWR, to assist its preparation of its letter.

Do you have a preference as to how the Applicant should circulate that information to Staff, DWR, the other parties, and the Committee?

Thanks, Bert

Acken, Albert

From: John Foreman [John.Foreman@azag.gov]
Sent: Thursday, October 09, 2008 4:45 PM
To: thogan@aclpi.org; chains@azcc.gov; jczimmerman@cox.net; jmoyes@lawms.com; Acken, Albert; Campbell, Tom
Cc: John Foreman; Linda Hogan; Jack Haenichen; Paul Rasmussen; Mike Biesemeyer; Gregg Houtz; Barry Wong; Mike Whalen; David Eberhart; Patricia Noland; Mike Palmer; Jeff McGuire; Billie Doorenbos
Subject: AGENDA FOR LINE SITING HEARING #139/#140
Attachments: PHX-#309912-v1-AGENDA_FOR_LINE_SITING_HEARING_#139_#140.DOC



PHX-#309912-v1-A
AGENDA_FOR_LINE...

Attached is an amended agenda for the hearing set for October 14, 2008. It was delivered to the ACC this afternoon for posting.

John Foreman
Assistant Arizona Attorney General
Chair, Arizona Power Plant and Transmission Line Siting Committee
1275 W. Washington
Phoenix, AZ 85007
Tel: 602-542-7902
FAX: 602-542-4377
john.foreman@azag.gov

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Acken, Albert

From: Jeff Zimmerman [jczimmerman@cox.net]
Sent: Friday, October 10, 2008 12:38 PM
To: John Foreman
Cc: Tim Hogan; chains@azcc.gov; Linda Hogan; rmitchell@azcc.gov; Jack Haenichen; Paul Rasmussen; Mike Biesemeyer; Gregg Houtz; Barry Wong; Mike Whalen; David Eberhart; Patricia Noland; Jay Moyes; Acken, Albert; Campbell, Tom; Mike Palmer; Jeff McGuire; Billie Doorenbos
Subject: Re: Case 139, Arizona Solar One: Water data
Attachments: Declaration recorded.pdf



Declaration
ecorded.pdf (5 MB..

Mr. Chairman,

I am attaching for your information a copy of the Declaration we wish to introduce into evidence. We are only interested in pointing out Sections 3.3 and 4.1. The fact that the Declaration was recorded against the Applicant's project site prior to their acquisition of it is a local condition that PIDD will ask to have reflected in the recommended CEC. I am attempting to reach all other counsel to see if we can get agreement on this. I do not have the latest version of the draft CECs but I am confident they will be provided to you by other counsel.

Sincerely,

Jeff Zimmerman
Jay Moyes
Moyes Sellers & Sims
480-609-0402

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----- Original Message -----

From: "John Foreman" <John.Foreman@azag.gov>
To: "Jeff Zimmerman" <jczimmerman@cox.net>
Cc: "Tim Hogan" <thogan@aclpi.org>; <chains@azcc.gov>; "Linda Hogan" <lhogan@azcc.gov>; <rmitchell@azcc.gov>; "Jack Haenichen" <JackH@AZcommerce.com>; "Paul Rasmussen" <PWR@azdeq.gov>; "Mike Biesemeyer" <mike@azroyal.com>; "Gregg Houtz" <GAHoutz@azwater.gov>; "Barry Wong" <Barry@barrywong.com>; "Mike Whalen" <Centurian@cox.net>; "David Eberhart" <TBirdGroup@cox.net>; "Patricia Noland" <panoland@hotmail.com>; "Jay Moyes" <JIMoyes@lawms.com>; "Albert Acken" <AAcken@lrlaw.com>; "Tom Campbell" <TCampbel@lrlaw.com>; "Mike Palmer" <MightyMikeBisbee@peoplepc.com>; "Jeff McGuire" <JMcGuire@q.com>; "Billie Doorenbos" <BillieDoorenbos@qwest.net>
Sent: Friday, October 10, 2008 10:44 AM
Subject: Re: Case 139, Arizona Solar One: Water data

Counsel,

I do not have a copy of the latest version of the draft CEC that I understand you have been working on or the document to which you refer. I can foresee two reasons for having someone available to testify about the document: 1) to establish it is what it purports to be (basic foundation); and 2) to establish relevance or materiality, if that is not evident from the document itself. If the document has been disclosed and circulated to the other parties, I assume they could advise you whether they object. I would want to hear from them before I ruled on its admissibility. The bar for admissibility is low, but it does exist. I assume there is no

problem with timely disclosure. If it is admitted and in the record, you can argue its impact. Please talk to the other parties and proceed accordingly. Please remember to also have copies of the exhibit for members of the Committee. I would like to have a copy of the draft CEC and conditions before the end of the day so I can prepare for the hearing on Tuesday. Do counsel still expect we will finish on October 14?

John Foreman
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>>> "Jeff Zimmerman" <jczimmerman@cox.net> 10/10/2008 10:15 AM >>>
Dear Chairman,

At the hearing on October 14th, Paloma Irrigation and Drainage District wants to introduce PIDD Exhibit 1, a copy of the Declaration containing real property covenants that has been recorded against all the land in the District and other lands. It is relevant to one of the generating plant conditions that the Committee will be asked to determine in Case No. 139 and to the proposed rebuttal testimony of Applicant's October 14th panel. If we need to lay a foundation for it, we can have the District Manager or other District representative present to briefly testify about it. But we just want to have it in the record so we can point out two provisions to the Committee members. So if it is possible to avoid the need for testimony since the Declaration is a public record, we believe the plain language of the document speaks for itself. We would appreciate your guidance on whether to have a District representative available to testify and we ask the other parties to agree to its admission in advance.

The District and the Applicant differ about whether proposed Condition No. 9 in the generating plant CEC, Case No. 139, should require that the Applicant file evidence, before commercial operations, that it has reached agreement with the District about the use of groundwater at the project. The Applicant wants Condition No. 9 to merely require the Applicant to show it has secured a right to use groundwater for the project. The Declaration contains provisions giving the District the right to regulate all water use on lands in the District. The Applicant has to reach agreement with the District, and the District will request that Condition No. 9 reflect this basic fact.

Respectfully submitted,

Jeff Zimmerman

Jay Moyes
Moyes Sellers & Sims
480-609-0402

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